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Pacific Stock Transfer Company

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

STEVE A. CLAUS AND MARK
ZOUZALIK,

Plaintiffs,

vs.

PACIFIC STOCK TRANSFER COMPANY,

Defendant.

PACIFIC STOCK TRANSFER COMPANY,

Third Party Plaintiff,

vs.

AMERICATOWNE HOLDINGS, INC.,

Third Party Defendant.

Case No. 2:18-cv-01771-RFB-PAL

**THIRD-PARTY COMPLAINT AGAINST
AMERICATOWNE HOLDINGS, INC.**

1 Defendant and Third-Party Plaintiff Pacific Stock Transfer Company (“PST”), by its attorneys
2 Hodgson Russ LLP, for its Third-Party complaint against third-party defendant AmericaTowne Holdings,
3 Inc. (“ATI”) respectfully alleges as follows:

4
5 **NATURE OF THIS ACTION**

6 1. This Action arises from PST’s alleged wrongful failure – as transfer agent for its
7 principal, ATI – to issue replacement certificates for certificates claimed to be lost and to remove
8 timely restrictive legends. A copy of Plaintiffs’ Original Petition filed July 12, 2018 (the “Petition”)
9 is attached hereto as Exhibit A.

10
11 2. PST denies that Plaintiffs made requests for certificate replacement, transfer, or
12 removal that were in good order and compliant with federal securities laws and otherwise denies that
13 PST acted wrongfully in any manner.

14 3. Notwithstanding PST’s denial that Plaintiffs have a valid claim for damages, PST
15 asserts that any losses or damages incurred by Plaintiffs are the result of the wrongdoing of ATI.

16
17 4. ATI, PST’s principal, directed PST not to comply with Plaintiffs’ requests, including
18 their requests for the replacement of lost certificates and the removal of restrictive legends.

19 5. Moreover, ATI has an express contractual obligation to indemnify PST.

20
21 **THE PARTIES, JURISDICTION AND VENUE**

22 6. PST is a Nevada corporation with its principle place of business in Nevada.

23 7. PST is a transfer agent registered with the U.S. Securities and Exchange Commission
24 (“SEC”).

25
26 8. Upon information and belief, ATI is a corporation organized and existing under and by
27 virtue of the laws of Nevada.

10. Venue is proper pursuant to 28 U.S.C. § 1391 as both PST and ATI are corporations domiciled in Nevada.

FACTUAL ALLEGATIONS

13. PST is and was at all relevant times the transfer agent for ATI.

14. The relationship between PST and ATI is governed by a written contract (“Contract”).

15. The Contract provides that ATI will indemnify PST in connection with its transfer agent services from and against “any and all actions or suits, where groundless or otherwise, and from

1 and against any and all losses, damages, costs, charges, counsel fees, payments, expenses and
2 liabilities arising out of the agency relationship.”

3 16. ATI has an express contractual obligation to indemnify PST for the services PST
4 rendered as ATI’s transfer agent.

5 17. Plaintiffs’ claims against PST concern PST’s services as transfer agent for ATI and,
6 thus, ATI is obligated to indemnify PST.
7

8 18. As ATI’s agent, PST acts at the behest of and pursuant to ATI’s directives, unless
9 doing so would violate federal or state securities laws or otherwise might expose PST to liability.

10 19. Many of the actions complained of by Plaintiffs in the Petition were taken by ATI or at
11 ATI’s request.

12 20. For example, Plaintiffs allege that ATI waived the posting of an indemnity bond in
13 connection with their request for replacement of certificates claimed to be lost but, in fact, ATI
14 expressly told PST that it did not waive the posting of an indemnity bond.
15

16 21. Further, at times material to Plaintiff’s Petition, ATI directed PST not to remove
17 restrictive legends from shares registered in the names of Plaintiffs.

18 22. To the extent Plaintiffs were injured by a delay in the removal of restrictive legends or
19 the replacement of certificates claimed to be lost, as alleged by Plaintiffs in the Petition, such delay
20 was caused by ATI and its directives to PST.
21

22 **FIRST CAUSE OF ACTION**

23 **CONTRIBUTION**

24 23. PST repeats and realleges the allegations in paragraphs 12-22 herein with the same
25 force and effect as if fully set forth in this paragraph.
26
27
28

1 24. Defendant denies any culpable conduct and alleges that, if Plaintiffs suffered any loss,
2 injury or damage through any culpable conduct other than their own, it was due, in whole or in part,
3 to the wrongful conduct of ATI.

4 25. In the event Plaintiffs sustained injuries and damages as alleged in the Petition, they
5 will have been brought about, in whole or in part, by reason of the culpable conduct of ATI.
6

7 26. ATI's culpable conduct exceeds that of PST.

8 27. Defendant, therefore, claims contribution from ATI.

9 **SECOND CAUSE OF ACTION**

10 **CONTRACTUAL INDEMNIFICATION**

11 28. PST repeats and realleges the allegations in paragraphs 12-22 and 24-27 herein with
12 the same force and effect as if fully set forth in this paragraph.

13 29. ATI has an express contractual obligation to indemnify PST for actions concerning
14 PST's services rendered as transfer agent for ATI.
15

16 30. The Plaintiffs' claims concern PST's services rendered as transfer agent for ATI and,
17 thus, ATI has an obligation to indemnify PST.

18 **THIRD CAUSE OF ACTION**

19 **EQUITABLE INDEMNIFICATION**

20 31. PST repeats and realleges the allegations in paragraphs 12-22, 24-27, and 29-30 herein
21 with the same force and effect as if fully set forth in this paragraph.

22 32. PST was at all relevant times the agent for ATI and, thus, acted at ATI's direction.
23

24 33. To the extent that PST acted wrongly, such actions were taken by PST at the direction
25 of its principal, ATI.

26 34. ATI, as the entity directing PST's actions, is more at fault than PST for the Plaintiffs'
27 purported injuries.
28

35. It would be inequitable to allow ATI to avoid liability on the basis that it engaged and directed a third-party to act on ATI's behalf.

PRAYER FOR RELIEF

WHEREFORE, PST respectfully requests that the Court enter a judgment in its favor:

- a) granting PST's third-party claims against AmericaTowne Holdings, Inc.;
- b) awarding damages to PST, including attorney's fees and other costs incurred in defense of the present action, in an amount to be proven at trial; and
- c) such other and further relief as the Court deems just and proper.

Dated this 11th day of February 2019.

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